VOLUME 6, NUMBER 1 JANUARY 1998

CanadaWatch

PRACTICAL AND AUTHORITATIVE ANALYSIS OF KEY NATIONAL ISSUES

a publication of the York University Centre for Public Law and Public Policy and the Robarts Centre for Canadian Studies of York University

SPECIAL ISSUE: FOCUS ON THE ENVIRONMENT

CANADA'S POSITION ON THE ENVIRONMENT AFTER KYOTO

BY DAVID V.J. BELL

Once upon a time, Canada was a world leader in the field of international environmental policy. Much of this was due to the work of Maurice Strong, who played a key role in both the 1972 Stockholm Conference and the 1992 Earth Summit in Rio. Canadian Jim MacNeill served as Secretary General of WCED, the World Commission on Environment and Development. WCED's report Our Common Future (also called The Brundtland Report in honour of WCED Chair Gro Harlem Brundtland) was published the same year the Ozone Treaty was signed in Montreal in 1987, and it continues to shape the discourse around sustainability.

Canadians were also pioneers of the concept of "Round Tables", and moved in the late 1980s to establish these multi-stakeholder advisory bodies at all levels of government and in every province. Canada was one of the first countries to develop a national Green Plan, an exercise completed while Lucien Bouchard was Minister of the Environment. This portfolio, then considered to be one of the most prestigious in Ottawa, was held by Jean Charest at the time of the Rio Conference. Canada was proud to give its support in Rio to the Framework Convention on Climate Change, which called on the industrialized countries of the North to reduce greenhouse gas emissions to 1990 levels by the year 2000.

In its first Red Book, the Liberal Party of Canada promised to work toward even greater reductions. Red Book 2 contains a much more circumspect discussion of the issue, and begins by acknowledging that Canada will fail to meet even the Rio target. Nevertheless, the Liberals pledged to "redouble our efforts to stabilize emissions of greenhouse gases and to develop new approaches to meet targets set through international negotiations." These "new approaches" would feature broad consultation and policy innovation, including a

continued on page 2

THE KYOTO PROTOCOL WILL COST ALL CANADIANS, BUT MAY NOT ACHIEVE MUCH

BY DANIEL SCHWANEN

The Kyoto Protocol on the United Nations Framework Convention on Climate Change, reached on December 10, 1997, commits Canada to reducing its emissions of greenhouse gases (GHG) by six percent below their 1990 level by 2012, or within fifteen years. Given that Canadian emissions of the three principal GHGS resulting from human activity—carbon dioxide (CO_2), methane, and nitrous oxide—have already gone up by thirteen percent since 1990, the target really implies a nineteen percent or so reduction from current levels.

This commitment cannot be met without enormous and costly changes to Canada's economic structure and to the lifestyles of Canadians. The reason for this is clear. While most GHGS, including water vapour, occur naturally, the increase in the atmospheric con-

continued on page 6

UNIVERSITÉ YORK UNIVERSITY

FEATURES

CANADA'S POSITION ON THE ENVIRONMENT AFTER KYOTO *from page 1*

scheme for emissions trading.

Why does much of this now read like a fairy tale? Why has Canada slipped from a position of international leadership to a place near the back of the pack, committed by our Prime Minister to "doing better than the Americans" on global warming, but unable even to announce our position until the day negotiations started in Kyoto? Many factors are responsible. Some of these are global in scope and origin, others are peculiarly Canadian.

However reluctantly, governments have eschewed or conceded their leadership role on a variety of policy fronts, and have focused instead on reducing debts, tackling deficits, downsizing, and deregulating.

Irrespective of the governing party's historic position on the ideological spectrum, most advanced industrial countries have witnessed what Susan Strange has called the *Retreat of the State* [Cambridge University Press, 1996]. Her principal argument is that where "states were once the masters of markets, now it is the markets which, on many crucial issues, are the masters over the governments of states" [at 4]. However reluctantly, governments have eschewed or conceded their leadership role on a variety of policy fronts, and have focused instead on reducing debts, tackling deficits, downsizing, and deregulating.

This broad trend has been accentuated in Canada by an additional concern with the "national question" and the possibility of a pro-sovereignty vote in Quebec. Anxious to avoid criticisms from Quebec about federal-provincial jurisdictional overlap and duplication, the federal government has undertaken a policy of "harmonization" that has further shrunk its presence in the field of environment and has generally reduced environmental policy to the lowest common denominator. Meanwhile, the bureaucracy has been slashed by more than one-third at both levels of government, undermining governmental capacity and forcing a reassessment of the "command and control" approach to environmental policy that was established in the 1970s and 1980s.

Business leaders have repeatedly expressed their strong preference for "voluntary measures" and "economic instruments" to deal with the instances (rare in their view) when "market forces" fail to resolve environmental problems.

It is no surprise that the business community has generally applauded these developments. Business leaders have repeatedly expressed their strong preference for "voluntary measures" and "economic instruments" to deal with the instances (rare in their view) when "market forces" fail to resolve environmental problems. For their part, the media have helped to promote an incoherent approach to reporting on the environment, in which it is either ignored completely or attention is focused on the most extreme voices and most confrontational aspects of environmental issues. The general public has not been well-served by this style of reporting, and has assumed either that environmental problems are well in hand, or that any attempt to resolve them will require extreme measures and painful choices between economic and environmental imperatives.

All of these tendencies surfaced during the lead-up to Kyoto. The issue of climate change, virtually ignored by the media in the five years after the Framework Convention

continued on page 4

CanadaWatch

PRACTICAL AND AUTHORITATIVE ANALYSIS OF KEY NATIONAL ISSUES

EDITORS-IN-CHIEF
Daniel Drache, *Robarts Centre for Canadian Studies, York University*
Patrick Monahan, *Osgoode Hall Law School, York University*

MANAGING EDITOR
Vladislav Tumir

BUSINESS MANAGER
Daniel Kumer

COLUMNISTS IN THIS ISSUE

David V.J. Bell
Daniel Schwanen
Patrick J. Monahan
Doug Macdonald
Stewart Elgie
Michael Cloghesy
Kathryn Harrison
Patrick Fafard
Gary Gallon

Canada Watch is produced jointly by The York University Centre for Public Law and Public Policy, and The Robarts Centre for Canadian Studies of York University.

For information, call (416) 736-5499, fax (416) 736-5739, write to *Canada Watch*, 227 York Lanes, 4700 Keele St., North York, Ontario M3J 1P3, or visit us at www.yorku.ca/faculty/osgoode/canwatch/cwhome.htm.

SUBSCRIPTION INFORMATION

Canada Watch is published six times per year.

Annual subscription rates
Institutions $75.00
Individuals $35.00
Students $20.00
(Outside Canada add $10.00)

Printed in Canada

ISSN 1191-7733

EDITORIAL

IN THIS ISSUE

BY PATRICK J. MONAHAN

This issue of *Canada Watch* is devoted to a discussion of two important environmental issues that are currently featured on the national (and in one instance, international) political agenda.

The first is the Kyoto Protocol, agreed to last December in Kyoto, Japan. Under the Protocol, Canada (along with 38 other countries), has agreed to reduce or limit its greenhouse gas emissions to a specified level; in Canada's case, we are to reduce emissions 6 per cent below what they were in 1990 by the year 2012. [See the accompanying article, "What's in the Kyoto Protocol?" for an outline of the contents of the Protocol.]

The Protocol will not come into force unless ratified by at least 55 parties. In Canada's case, that calls into question the extent to which the provinces are to be involved in reviewing and approving the Agreement.

This, in turn, recalls memories of the process surrounding the ill-fated Meech Lake Accord in the late 1980s. In both cases (Kyoto and Meech), there was almost no domestic public debate prior to an all-night meeting at which a final text was hammered out between high-level government negotiators. The resulting Agreement was then presented as a "seamless web", which must be accepted or rejected *in toto*. (This latter requirement is not yet explicit in terms of Kyoto, but it is inevitable given the fact that it is simply not feasible to permit each party to a complicated multilateral deal to propose its own set of preferred amendments). The inability to propose or entertain amendments then stimulates a reaction to the process that was used to develop the text in the first place.

Will Kyoto meet the same unhappy fate as Meech? In part, the answer to this question will depend upon the issue raised earlier—do the provinces have to participate in ratifying the Protocol? The provinces will argue that, since the Protocol involves control over the environment (a matter falling under provincial jurisdiction), they must consent to its terms. But Ottawa can argue that it also has a significant environmental role, as was recently recognized by the Supreme Court of Canada in *R.* v. *Hydro Quebec*. (This decision upheld the validity of certain provisions in the *Canadian Environmental Protection Act.*) On this reasoning, Ottawa may be under a political obligation to consult with the provinces, but the final legal power of ratification rests with the national government alone.

This leads naturally to a consideration of the second theme featured in this issue of *Canada Watch*—the Canada-Wide Accord on Environment Harmonization, agreed to unanimously by federal, provincial, and territorial governments in late 1996. The Accord, which seeks to "rationalize" federal, provincial, and territorial roles in relation to the environment, was to have been signed in November of 1997. However, only weeks prior to the scheduled signing, the ceremony was postponed until some time early in the new year. Then, in late November, a House of Commons Committee recommended that the federal government not proceed with the Accord on the grounds that the need for the agreement had not been demonstrated.

The Accord has received relatively little public debate and analysis. In the interests of stimulating such a debate, we present a range of viewpoints and assessments, both positive and negative.

There is a clear opportunity for the provinces to develop and exploit linkages between these two issues. The Environmental Accord refers to the environment as a matter of shared jurisdiction, requiring cooperation and coordination between all levels of government. Those kinds of commitments strengthen the case for the provinces to have a meaningful role in the ratification of the Kyoto Protocol. All of which suggests that the Environmental Accord is unlikely to be ratified until the fate of the Protocol has been finally settled.

Patrick J. Monahan is a Professor of Law at Osgoode Hall Law School, York University.

WHAT'S IN THE KYOTO PROTOCOL

BY PATRICK J. MONAHAN

The Kyoto Protocol is a follow-up to the Convention on Climate Change, a treaty signed in 1992 and subsequently ratified by over 160 states. The Convention, which took effect on 21 March 1994, set an "ultimate objective" of stabilizing "greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic (human-induced) interference with the climate system". The Convention did not specify what these concentrations should be, only that they be at a level that is not dangerous.

"Greenhouse gases" are naturally occurring gases such as carbon dioxide (CO_2), methane (CH_4), and nitrous oxide (N_2O), which act like a blanket around the earth. Without this natural blanket, the earth's surface would be some 30°C colder than it is today. The problem is that human activity is making the blanket "thicker". For example, if emissions of these gases continue to grow at current rates, it is expected that atmospheric levels of carbon dioxide will double from their pre-industrial levels over the course of the next century. The most direct result, according to the scientific consensus, is likely to be a "global warming" of 1 to 3.5°C over the next 100 years. This is in addition to an apparent temperature increase of around half a degree Centigrade since the pre-industrial period before 1850. But the nature and extent of global warming remains a matter of scientific controversy and debate.

The Kyoto Protocol attempts to fill the gap left in the 1992 Convention by setting specific emission reduction targets for 39 states, including

continued on page 4

WHAT'S IN THE KYOTO AGREEMENT *from page 3*

Canada. Most of these states have agreed to reduce their emissions from between 6 to 8 per cent below the 1990 levels. [See Table on this page, setting out the individual targets for the 39 states.] This reduced emission level is to be achieved in the "commitment period" of 2008 to 2012.

If parties reduce emissions below the levels required under the Protocol, they will be able to transfer the "excess" reduction to another party, thereby permitting the latter to achieve its targets without actually reducing its own emissions to the mandated level.

The Protocol consists of 27 Articles, and will come into force when ratified by at least 55 parties to the Convention; the ratifying countries must also include parties that account in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in the Annex.

Many of the provisions in the Protocol set out obligations to develop mechanisms and reporting requirements necessary to make the achievement of the emission targets feasible. For example, parties are to develop and have in place by 2007 a "national system for the estimation of . . . emissions by sources" (Article 5.1), with the methodologies for such estimation systems to be agreed upon by the parties at a subsequent meeting (Article 5.2); each party shall submit annually data on its emissions by source beginning in the year 2008 (Article 7.1); the information submitted by each party is to be reviewed by independent expert review teams, who shall prepare "a thorough and comprehensive assessment of all aspects of the implementation by a Party of this Protocol" (Article 8.1-8.3).

The Protocol also provides for a market mechanism whereby parties will be able to purchase emission "credits" from other parties. If parties reduce emissions below the levels required under the Protocol, they will be able to transfer the "excess" reduction to another party, thereby permitting the latter to achieve its targets without actually reducing its own emissions to the mandated level.

While the Protocol will be legally binding as a matter of international law once it is ratified and comes into force, there are no enforcement mechanisms or sanctions established for breach of its obligations. The Protocol provides for the approval, at a subsequent meeting, of "appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance" (Article 17). However, any such enforcement mechanisms would require approval of three-quarters of the parties to the Protocol, and would only become effective as against parties who agreed to be so bound.

Party	Emission Commitment (% of base year)
Australia	108
Austria	92
Belgium	92
Bulgaria	92
Canada	94
Croatia	95
Czech Republic	92
Denmark	92
Estonia	92
European Community	92
Finland	92
France	92
Germany	92
Greece	92
Hungary	94
Iceland	110
Ireland	92
Italy	92
Japan	94
Latvia	92
Liechtenstein	92
Lithuania	92
Luxembourg	92
Monaco	92
Netherlands	92
New Zealand	100
Norway	101
Poland	94
Portugal	92
Romania	92
Russian Federation	100
Slovakia	92
Slovenia	92
Spain	92
Sweden	92
Switzerland	92
Ukraine	100
United Kingdom	92
United States of America	93

Patrick J. Monahan is a Professor of Law at Osgoode Hall Law School, York University.

AFTER KYOTO *from p. 2*

was signed in 1992, suddenly crashed onto the media agenda. In an attempt to cover "both sides" of the "debate", much attention was given to the climate change skeptics and critics, despite the unprecedented consensus among scientists on the need to take action now. (The scientific work underlying the Kyoto conference was undertaken over a period of many years by a body called the Intergovernmental Panel on Climate Change (IPCC), which involves nearly 3,000 scientists from over 100 countries. Their findings pass through a nine-step process of review and critique, including government policy reviews in each country. Consensus is the rule. This degree of intensive scrutiny has been described authoritatively as "the most elaborate ever attempted by the scientific community on a science-environment issue." In a desperate attempt to shift public opinion during the final weeks before Kyoto, the Coal Association of Canada, the Canadian Association of Petroleum Producers, the Canadian Gas Association and, (from a very different perspective), the David Suzuki Foundation, all placed full-page ads in newspapers across the country.

Although Canada is of course a member of IPCC, and Canadian scientists have played an important role in conducting research on climate change, the Canadian government seemed paralyzed when it came to articulating a firm position and working out the implications for implementation. The terms of the agreement that was ultimately reached in Kyoto go beyond what the provinces supported at a meeting held last Fall in Regina. Yet their cooperation

will be essential if Canada is to meet the new objectives. Meanwhile, the media have dropped the issue of climate change. Where do we go from here?

With the Kyoto agreement behind us, it might appear that attention has shifted from whether we should act to reduce greenhouse gas (GHG) emissions to how best to achieve the reductions to which we agreed. One cannot ignore, however, the temptation to sit back and wait for ratification by the U.S. Senate before proceeding to do anything. Some groups are encouraging precisely this response. But many compelling factors suggest a more proactive, responsible position.

Despite suggestions by the fossil fuel industry that economic disaster will follow from efforts to reduce CO_2 emissions, polling done last summer by Environics indicated that a substantial majority of Canadians gave at least some credence to the statement that "Canada can reduce its emissions without damaging the economy, because new technologies in renewable energy and energy conservation will lead to new investments and jobs."

First, public opinion is surprisingly supportive of action. Despite suggestions by the fossil fuel industry that economic disaster will follow from efforts to reduce CO_2 emissions, polling done last summer by Environics indicated that a substantial majority of Canadians gave at least some credence to the statement that "Canada can reduce its emissions without damaging the economy, because new technologies in renewable energy and energy conservation will lead to new investments and jobs." Thirty per cent nationwide found this statement "very believable" and a further 51 per cent "somewhat believable." Only 16 per cent found it not very (13%) or not at all (3%) believable. (A similar question asked in a U.S. poll in November elicited 63 per cent agreement that reductions in GHG emissions could be achieved "without hurting the economy", and only 24 per cent believing that this could be done "only by hurting the economy".) Canadians appear to want action. Over 80 per cent found very (46%) or somewhat (36%) believable the statement, "If we take no action, Canada's economy will be significantly damaged in the long-term by climate change, because of flooding and negative impacts on industries like agriculture, fisheries and forestry".

The views of the general public on complex issues of public policy are more significant to political than economic feasibility. On the latter point, however, 2,800 economists, including 8 Nobel Prize winners, issued the following statement:

"As economists, we believe that global climate change carries with it significant environmental, economic, social, and geopolitical risks, and that preventative steps are justified. Economic studies have found that there are many potential policies to reduce greenhouse gas emissions for which the total benefits outweigh the costs. For the U.S. and Canada, sound economic analysis shows that there are policy options that would slow climate change without harming North American living standards, and these measures may, in fact, improve productivity in the longer run. The revenues generated from such policies can effectively be used to reduce the deficit or lower existing taxes."

Business itself is more supportive than might appear by reading only the ads from the fossil fuel sector. Increasingly, leading corporations are embracing "eco-efficiency" as part of their mission.

Business itself is more supportive than might appear by reading only the ads from the fossil fuel sector. Increasingly, leading corporations are embracing "eco-efficiency" as part of their mission. (The most advanced are explicitly adopting a commitment to sustainability.) This is not altruism but a response to internal and external "drivers" that include pressure from financial institutions; the need to meet high international standards such as ISO 14000 in order to trade into some markets (particularly in Europe); opportunities for substantial cost cutting for energy and waste disposal; pressure from enlightened customers, stockholders, and employees; and opportunities for market differentiation, as well as the satisfaction of "doing the right thing".

The "crisis" of climate change is depicted as a "threat" by major elements of the energy industry, but it holds out the promise of huge opportunities for the renewable energy sector, and for "ESCOs" (Energy Service Companies). Merely by renewing and upgrading for increased energy efficiency our residential and non-residential buildings, Canada can achieve a large percentage of the needed reductions in GHG emissions while providing thousands of new jobs. It is estimated that over a 10-15 year time frame, GHG emission reductions of 50 Megatonnes/year can be achieved. This constitutes nearly ten per cent of current net Canadian emissions. The capital investment required to carry out this project ($50-75B) would be paid for entirely by energy cost savings, would generate about 1 million person-years of employment, and would result in $5-10B annual savings in energy costs.

At the same time, the new GHG emission targets will give technological development an enormous boost. New technologies (such as the Ballard fuel cell) are already emerging as the initial wave of what some have called a "second industrial revolution", which will feature technologies that are environmentally sustainable. These technologies would enjoy a huge international market, helping make our economy much more "competitive" globally.

Another element of the business community that is leading the push for action to reduce GHG emissions is the in-

continued on page 6

CANADA'S POSITION ON THE ENVIRONMENT AFTER KYOTO *from page 5*

surance industry, which has seen its world-wide disaster losses increase from an average of $1B annually in the 1960s to $50B in the 1990s in constant dollars!

What is the role for government(s) in the post-Kyoto setting? In at least one crucial area, the federal government can lead by example by agreeing to implement green budgeting practices that will help "get the prices right", remove environmentally perverse subsidies, and encourage environmentally sustainable practices throughout society, particularly in the energy sector.

Economic instruments alone will not suffice, however. Enlightened leaders in all sectors need to speak out on this issue in fora that will allow public debate and increase public awareness. Climate change affects us all. We will all suffer if the problem is not addressed. More importantly, we can all contribute to the solution. There are a number of "win-win" strategies, and we can work out ways of offsetting whatever "pain" may result in some sectors by drawing on the "gains" in others. But we need to be brought together. Success will require a collaborative approach involving key stakeholders from all levels of government working with business, labour, environmentalists, Aboriginal peoples, and the research community.

Is this possible? One is reminded of Kenneth Bouldings' "existence theorem": everything that exists is possible. We already have before us successful models. In 1994-95, under the auspices of the Ontario Round Table on Environment and Economy (ORTEE), a "Transportation Collaborative" involving 32 key stakeholders from the transportation sector hammered out a strategy for reducing CO_2 emissions that was formally endorsed by all but two of the participants. The elements of the strategy reinforced the objective of effecting a shift from automobiles to transit, by encouraging more compact mixed-use development in urban areas, implementing fuller cost pricing for transportation modes, achieving better integration of transportation systems in large urban areas, and implementing transit priority measures, while at the same time encouraging the development of alternative fuels and more fuel-efficient vehicles and enhancing freight movement by improved intermodal arrangements.

More important than the substance of the strategy is the collaborative process by which it was developed. Signatories to the strategy included General Motors, the Canadian Auto Workers, Consumers Gas, Union Gas, the Sierra Club, Pollution Probe, Canadian National, Canada Transport International, and many others. Despite the very different, often sharply opposed, perspectives and interests each party brought to the table, as a result of the collaborative process each of them developed a larger vision and sufficient shared understanding of the nature of the problem to reach consensus on what steps were needed to tackle it.

Herein lies the recipe for a broader, country-wide initiative as well as for similar efforts at the provincial and local levels. For the first time in nearly two decades, we are moving into a period of budget surpluses that will afford governments some fiscal breathing room. One hopes it will also encourage more positive leadership that will allow Canada to move once again to the higher ground on which we stood so proudly a few long years ago.

David V.J. Bell is Director, York Centre for Applied Sustainability, and Professor, Faculty of Environmental Studies, York University.

THE KYOTO PROTOCOL WILL COST ALL CANADIANS BUT MAY NOT ACHIEVE MUCH *from page 1*

centration of GHG over the past two hundred years has been associated with human economic activities, which in turn have sustained rising incomes and standards of living. These activities include the generation of electricity for uses such as residential and office heating and lighting, the burning of fuel in cars and other vehicles, manufacturing operations, waste disposal, agricultural production, the cutting of forests (considered to be carbon "sinks" because they absorb CO_2), as well as the extraction and transportation of fossil fuels themselves, such as coal, crude petroleum, and natural gas.

The extent to which the increase in these human-induced emissions have contributed to an increase in the earth's surface air temperature over the past century is not clear, since many other, natural factors, are also at work. The United Nations-sponsored Intergovernmental Panel on Climate Change (IPCC) uses the language of probabilities when discussing this effect, and has also recently revised substantially downward its estimate of climate change which would occur by 2100, under a scenario whereby GHG concentration in the atmosphere would stabilize at 50 per cent above current levels. Yet, uncertainty should not mean denying the need for preventive action, meaning putting in place measures that will ensure that the growing energy needs can be met while at the same time curbing GHG emissions, to the extent that scientific evidence confirms this is necessary.

While realizing that this objective would at a minimum involve major investments, some of the changes that this would entail could be benign, even positive for the economy, such as those resulting in increased energy efficiency and application of new, less GHG-intensive technologies (such as, for example, various types of fuel cells), or switching towards the less carbon-intensive among existing sources of energy. In the absence of such developments, however, reduced emissions could only be achieved through reduced per capita economic activity, or severely curtailed population growth in Canada. In short, what the costs will be in the end, and how they will be distributed, depends significantly on what specific policies are adopted nationally and globally to reduce GHG emissions. In light of these choices, one would have

expected the Kyoto negotiations to produce a plan to curb emissions at the least possible cost to the global and national economies. But by and large, this is not what happened.

The main reason for this failure is that the Kyoto Protocol completely disregards credible evidence, endorsed by the United Nations-sponsored IPCC itself, that quick reductions in emissions are far costlier than longer-term ones (the longer the period, the more time for efficiency measures and technological improvements to be brought on stream during normal capital stock turnover, given that incentives to do so are put in place). Instead, governments in Kyoto have bought interpretations of the latest IPCC report that quick, sharp cuts in emissions were necessary to reduce the risk of climate change. In fact, the IPCC report affirms no such thing, and serious evidence, based on the same models used by the IPCC, points to the opposite.

In addition, the Kyoto Protocol goes only part way in ensuring that any reduction in time occurs where it is least costly to make. It does so by allowing some form of trading of emissions reduction credits between countries that manage to overshoot their targets, and those that are having difficulty doing so, and also by setting up a system of credits which rich countries (where emissions reduction tends to be the most expensive) could accumulate for their contribution to projects that reduce emissions in developing countries (where it often tends to be less expensive to reduce emissions). However, limits will be put on the extent to which countries can buy emission reductions from others in such ways.

The Protocol is also made far less effective by the fact that it requires some of the worst emitters to make an effort to reduce emissions, but not others. Specifically, the delegates to the Kyoto conference lacked the will and imagination to ensure that developing countries—which will collectively account for most of the GHG emissions in the 21st century—bear any responsibility for ensuring that their development be less intensive in carbon fuels and other GHG. It would have been possible to devise commitments ensuring less GHG-intensive growth in these countries, while maintaining intact their legitimate objective continued development relative to rich countries (not, however, through the setting-targets-by-country exercise, which developing countries rightly feared would hurt their economies, as it will hurt that of many rich countries).

[R]atification of this Protocol should be preceded by extensive public consultations, a Parliamentary debate, and a free vote held in the House of Commons.

There are also serious related questions as to whether the Protocol compromises the competitiveness of industry in Canada and of its major trade partner, the U.S. On the surface, Canada has agreed to reductions which seem in line with those of its major trading partners. The U.S. will have to cut emissions by slightly more than Canada (about 4 per cent more from current levels, because U.S. emissions have increased by three percentage points more than Canada's since 1990, and the U.S. has agreed to cut one per cent more than Canada from the 1990 base year). The European Union, however, has probably gained an immediate competitive advantage in Kyoto, because it is already closer to achieving its targets through a combination of reduced subsidies to coal (replaced by natural gas in the U.K.), destruction of inefficient industries in the former Communist countries, and slower population growth than Canada, the U.S., or Australia. Hence, Europe has already achieved much of its target through "easy greenery", while the latter countries will undoubtedly have to make major investments—or reduce economic or population growth—to meet theirs.

Furthermore, given increasing global trade and investment links, a certain amount of "carbon leakage" will also undoubtedly occur towards (less energy-efficient) developing or former Communist countries; that is, some Canadian emissions-intensive activities may well move where targets are more lenient (Russia, the Ukraine, Australia), or non-existent (South America, Southeast Asia). This will hurt Canada without making a dent in global GHG emissions. To prevent this, Canada could purchase credits from Russia and the Ukraine, but this would reduce the anticipated fiscal dividend in this country and/or would result in deteriorating external accounts for Canada.

A full assessment of the competitiveness will have to await agreement (slated for 1998) on how countries will be able to account for changes in forestry practices (counting as enhancing carbon "sinks" as part of their reduction targets).

Although many "no-regrets" (e.g., energy-efficiency) and voluntary measures can be achieved at a relatively low cost, they are unlikely to be sufficient to achieve the targets, even if monetary incentives (such as tax breaks) are attached to achieving them. Much private and public investment will likely have to be made in research towards less carbon-intensive energy sources and usage, possibly also requiring the adoption of new standards on a large scale (such as for vehicles and urban planning, the cost of which would again depend on the speed with which they are introduced). Even then, it is unlikely that the goals of the Protocol can be met without a tax or fee of some sort on emissions or emissions-producing activity.

In light of these and other factors, most independent analyses of the economic impacts of reducing GHG emissions have concluded that there would be significant costs for Canada, for other industrialized nations, and indeed developing countries, from doing so. For the amounts and speed of reductions envisaged by Canada under the Kyoto Protocol, a reasonable estimate of the costs in terms of lost output (and incomes) to the domestic economy would be two per cent of GDP, or some $18 billion on average for each year between 2000 and 2015. To put things in perspective, this would be the equivalent of another early 1990s-style recession from which the economy would take fifteen or so years to recover. Unamended, the Kyoto Protocol will lead us right into this scenario, without any guarantee that the sacrifices will have

continued on page 19

CLIMATE CHANGE AND THE BIOPHYSICAL NATURE OF ENVIRONMENTAL POLITICS

BY DOUG MACDONALD

In 1985 the federal and provincial governments culminated a successful process of national policy development which allowed Canada to meet its goal of a fifty per cent cut in acid rain causing sulphur-dioxide emissions. Two years later, Canada was one of the lead nations in the successful negotiation of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.

Not only had Canada joined the United States and Japan among the group of nations least interested in action on climate change, but federal-provincial and inter-departmental wrangling prevented this country from taking any position at all prior to commencement of the Kyoto negotiations.

A decade after that high point, however, in the Fall of 1997, Canada's international reputation for environmental protection lay in the ashes. Not only had Canada joined the United States and Japan among the group of nations least interested in action on climate change, but federal-provincial and inter-departmental wrangling prevented this country from taking any position at all prior to commencement of the Kyoto negotiations. The federal-provincial agreement on a target of stabilization by 2010, reached at a meeting of energy and environment ministers in Regina on November 12, 1997, was subsequently ignored by Ottawa: the press conference scheduled by the Chrétien government for Friday, November 28 to announce the Canadian position on the eve of the Kyoto talks had to be cancelled to allow negotiations to continue over the weekend. And when the Canadian position was finally announced on the following Monday, after talks had begun in Japan, a member of the Alberta cabinet immediately announced he was going to Kyoto to continue the Edmonton-Ottawa feud on a larger stage.

The Chrétien government already has an environmental record far worse than that of either Prime Ministers Mulroney or Trudeau. The fiasco of Canadian climate change policy has now demonstrated not only that this government has scant concern for the issue, but that it is unable to muster basic competence, either in reaching agreement with the provinces or around the cabinet table.

In another article in this issue [see page 1], David Bell has documented the factors which have produced the current Canadian unwillingness to incur the costs of environmental protection. I would like to briefly supplement that analysis by considering whether the physical nature of the climate change issue of most significance—the emission of carbon dioxide during fossil fuel combustion—must also be considered for explanatory purposes.

Doern and Conway have suggested that environmental policymaking be seen as a "double dynamic", the first part being the conflicts and alliances amongst state and non-state actors found in every policy process, and the second being the "ever-changing ecological and biophysical realm, which is characterized increasingly by unpredictability, scientific uncertainty, and stark spatial realities".

[W]e must consider not only the relevant ideas, institutions, and interests, but also the physical nature of cod in the North Atlantic, green garbage bags sitting at the curb, or infinitesimal quantities of dioxin in the St. Clair River.

They suggest that, to understand environmental politics and policy, we must consider not only the relevant ideas, institutions, and interests, but also the physical nature of cod in the North Atlantic, green garbage bags sitting at the curb, or infinitesimal quantities of dioxin in the St. Clair River. By comparing the nature of sulphur and carbon dioxide emitted to air, can we better understand why acid rain was a Canadian success and climate change nothing but folly and farce?

Acid rain was constructed, first by scientists and then by environmentalists, as a social issue requiring a policy response in the late 1970s. The substances of concern were both sulphur-dioxide emissions and nitrogen oxides, but attention was focused upon the former, seen as the primary problem. Canadian policy development from 1980 to 1985 was a process of negotiation amongst the key actors of Manitoba, Ontario, and Quebec, and their relevant hydro utilities and smelters, coordinated by Environment Canada and carried out against the backdrop of unsuccessful attempts to negotiate a Canada-U.S. agreement. Greenhouse gas negotiations, on the other hand, encompass a much larger number of business actors, all of the provinces, and the backdrop is one of global, rather than bilateral, diplomacy.

Canada made a unilateral commitment to stabilize greenhouse gas emissions in 1990 and thus had no difficulty in ratifying the 1992 Rio Framework Convention on Climate Change, since it imposed no additional obligations. Development of the Canadian program over the next three years, the National Action Strategy on Climate Change announced on February 20, 1995, however, posed political problems not encountered in the case of acid rain. In that instance Ontario, the major polluter, was required to absorb costs which were never seen to pose any fundamental threat to the provincial economy. The two major Ontario sources, Ontario Hydro and Inco, did their best to minimize requirements for cost internalization, but were unable to mount arguments

which successfully identified their own self-interest with that of the province as a whole.

Aquatic acidification was symbolized by the metaphor of dying lakes, thus touching the heart of Canadian identity, particularly in Ontario and Quebec. The central symbol of the greenhouse issue—unnatural weather, which conveys images of sunny climes as much as danger and death—carries no such weight. Nor is the degree of scientific certainty comparable.

The climate change process of the 1990s, however, was very different. Alberta was motivated to resist federal attempts to develop a national program in a way that Ontario never had been. Still smarting from the regional alienation symbolized by the 1980 National Energy Program, Alberta saw any threat to the financial well-being of the petroleum industry not only as a major fiscal problem, but as a direct challenge to Western identity. In consequence, the regional champion, then Minister of Natural Resources Anne McClellan, led the fight in cabinet to ensure that voluntarism, rather than law, would be the policy instrument of choice. A month before announcement of the Canadian program, on January 20, 1995, Natural Resources Canada and the Canadian Association of Petroleum Producers signed a Memorandum of Understanding, codifying the industry commitment to take voluntary action to reduce emissions. Although the federal Environment Minister, Sheila Copps, had publicly stated her preference for law-based regulation, the flagship of the 1995 Canadian program when it was announced in February turned out to be the Voluntary Challenge and Registry Program. Throughout the 1997 negotiations, the oil industry and Alberta continued to claim, despite the admitted failure to achieve the policy objective, that voluntarism was preferable to law.

In 1985, the only Ontario government debate over instrument choice was whether to bring in new, stand-alone acid rain legislation or, as was eventually decided, to rely on regulations under the provincial *Environmental Protection Act*. Unlike the federal debate a decade later, voluntarism was never considered nor advocated by the provincial energy or industry ministers.

At least in part, this difference is explained by the fact that the two substances primarily associated with acid rain and climate change have been seen very differently. Aquatic acidification was symbolized by the metaphor of dying lakes, thus touching the heart of Canadian identity, particularly in Ontario and Quebec. The central symbol of the greenhouse issue—unnatural weather, which conveys images of sunny climes as much as danger and death—carries no such weight. Nor is the degree of scientific certainty comparable.

Although the Reagan administration used uncertainty as its major rationale for delaying U.S. action throughout the 1980s, the issue was seen very differently in Canada, where by the early 1980s there was scientific and lay agreement on causes and effects. On November 22, 1997, the Toronto *Globe and Mail*, on the other hand, carried a prominent article which led off with the statement that "A funny thing happened on the way to the international global-warming conference: the Earth failed to heat up". Climate change is still seen as an issue characterized by scientific uncertainty.

The inherent nature of the issues is such that the polluters must pay a much higher price to achieve the stabilization objective than was required to meet our goal of cutting acid rain in half.

More important than the relative science or symbols, however, are the fundamental economic interests associated with the two substances. As noted, significant reductions in fossil fuel combustion would impose a proportionate cost upon Alberta and other producing provinces, such as British Columbia and Saskatchewan, many times greater than those borne by Ontario and Quebec to limit acid rain, thus concentrating the Western mind. Nor do the Western provinces face any concerted provincial opposition.

In its fight against the National Energy Program, Alberta faced not only a federal government intent upon garnering tax revenue associated with global price increases, but also the major consuming province, Ontario. That was not the case in 1997, when there was no major division among the provinces. Ontario, for instance, implementing an agenda of environmental deregulation under the Harris government and, in any case, having a consistent interest in low energy prices, made no public statements in favour of tough Canadian action. The inherent nature of the issues is such that the polluters must pay a much higher price to achieve the stabilization objective than was required to meet our goal of cutting acid rain in half.

There is no doubt that the shift in ideas between 1985 and 1997 concerning the relative value of state and market goes a long way to explain these two very different policy decisions and outcomes. At the same time, the nature of the substances in question clearly must also be considered. In this case at least, Doern and Conway's double dynamic is an aid to understanding policy.

Doug Macdonald is a Tutor in the Environmental Studies Program, Innis College, University of Toronto, and Post-Doctoral Research Fellow, Environmental and Resource Studies Program, Trent University.

THE HARMONIZATION ACCORD: A SOLUTION IN SEARCH OF A PROBLEM

BY STEWART ELGIE

On January 1, 1990, Hydro-Quebec allegedly dumped PCBs into a tributary of the St. Lawrence River. The discharge of PCBs—a highly toxic substance—is prohibited under Quebec law, yet the Quebec government took no steps to prosecute the provincially-owned utility. Therefore, the federal government stepped in and laid charges under the *Canadian Environmental Protection Act* (CEPA), which also prohibits the discharge of PCBs. This situation illustrates the importance of the federal government playing a strong role in environmental protection.

In a strongly worded judgement, the [Supreme Court of Canada] emphasized the importance of the federal government "exercising the leadership role expected of it by the international community" in the area of environmental protection.

However, the story does not end here. Hydro-Quebec, joined by the Quebec government, decided to challenge the constitutionality of CEPA. The case went all the way to the Supreme Court of Canada where, on September 18, 1997, the Court upheld the CEPA, ruling that the federal government has the constitutional authority to set national standards to control toxic pollution. In a strongly worded judgement, the high court emphasized the importance of the federal government "exercising the leadership role expected of it by the international community" in the area of environmental protection.

THE ACCORD

As the ink was drying on this landmark decision, securing the federal government's authority to take a leadership role in environmental protection, Canada's federal and provincial environment ministers were preparing to sign an agreement that would do just the opposite. The Canada-Wide Accord on Environmental Harmonization is a comprehensive federal-provincial agreement designed to "rationalize" environmental management in Canada. Distilled to its essence, the Accord has two main thrusts. First and foremost, it seeks to eliminate federal-provincial overlap in the area of environmental protection. Under the Accord, the general rule would be that the federal government will regulate environmental protection on federal lands, and the provinces will regulate everywhere else (although exceptions may be made in certain circumstances). In other words, in areas of shared environmental jurisdiction, the federal government would withdraw and allow the provinces to be the sole environmental regulator. The second main thrust of the Accord is that national environmental protection standards would be set, not by the federal government, but by all 13 provincial, territorial and federal environment ministers, on a consensus basis.

The Harmonization Accord states that its primary objective is to "enhance environmental protection". In fact, it is likely to have just the opposite effect.

DEBUNKING THE DUPLICATION MYTH

The Accord focuses almost exclusively on dividing up responsibility for environmental protection between the federal and provincial governments. It says nothing about what the governments will do to strengthen, or even maintain, existing environmental protection levels.

The greatest threat to environmental protection in Canada is not duplication—or perceived duplication—but rather dramatic cuts in government funding. In recent years, the Ontario, Alberta, Newfoundland, and Quebec governments, among others, have slashed their environment departments' budgets by 30-60 per cent, and laid off hundreds of environmental protection officers.

The basic premise of the Accord is that there is a significant amount of wasteful duplication occurring between federal and provincial environmental regulators, and that eliminating this duplication will improve environmental protection. To support this premise, the Canadian Council of Ministers of the Environment hired the consulting firm KPMG to conduct a study documenting the extent of federal-provincial environmental duplication. The problem was, the study could not find any examples of significant duplication. In areas where federal and provincial environmental authorities overlapped, KPMG concluded, administrative arrangements were already in place to ensure coordination and avoid unnecessary duplication. Thus, the basic premise of the harmonization initiative is flawed.

The greatest threat to environmental protection in Canada is not duplication—or perceived duplication—but rather dramatic cuts in government funding. In recent years, the Ontario, Alberta, Newfoundland, and Quebec governments, among others, have slashed their environment departments' budgets by 30-60 per cent, and laid off hundreds of environmental protection officers. At the same time as the provinces are dramatically reducing their environmental capacity, the Accord purports to give them far more environmental responsibility.

THE NEED FOR NATIONAL STANDARDS

Far from strengthening environmental protection in Canada, the Harmonization Accord is likely to weaken it, by weakening the role of the federal government. There is ample evidence indicating that federal leadership in setting

baseline environmental standards typically leads to stronger environmental protection levels. That is why the U.N. Commission on Environment and Development, in its widely-acclaimed *Our Common Future* report, recommends that the setting of environmental standards "should normally be done at the national level, with local governments being empowered to exceed, but not to lower, national norms". This recommendation was highlighted by the Supreme Court of Canada in its recent Hydro Quebec decision.

The strong leadership role taken by the U.S. federal government may be one reason why U.S. environmental standards are generally tougher than Canadian ones. For example, a 1997 report by the North American Commission on Environmental Cooperation found that Canadian industries, on average, emit more than twice as much air and water pollution as their U.S. counterparts.

To see a working example of the benefits of federal leadership in setting environmental standards, one need only look south of the border. Prior to 1970, environmental regulation in the U.S. had been primarily the domain of the states. In the early 1970s, however, the U.S. federal government passed a series of strong statutes setting national standards in a number of environmental areas, including air quality, water quality, endangered species protection, toxic substances control, and environmental assessment.

These new federal laws typically allowed states to set stronger, but not weaker, standards. The effect of this federal legislative initiative was to significantly raise environmental protection levels in most parts of the country (except in a few states whose existing standards already exceeded the new federal ones). One particularly interesting outcome was that these new federal laws spurred most states to pass strong new environmental laws of their own, equaling—or in some cases surpassing—the federal standards.

The strong leadership role taken by the U.S. federal government may be one reason why U.S. environmental standards are generally tougher than Canadian ones. For example, a 1997 report by the North American Commission on Environmental Cooperation found that Canadian industries, on average, emit more than twice as much air and water pollution as their U.S. counterparts.

The phenomenon of the federal environmental initiative spurring provincial action also can be seen in Canada, at least in those areas where the federal government has taken a leadership role. For example, in 1990, the federal government introduced comprehensive environmental assessment legislation that would apply to most major industrial projects. The provinces complained loudly about this intrusion into their jurisdiction (none more so than Alberta). However, shortly after the passage of the federal bill, Alberta and three other provinces passed new environmental assessment legislation of their own. A similar story has unfolded in the area of endangered species protection: following the release of proposed federal legislation in 1995, four provinces introduced their own endangered species bills, and another province significantly strengthened its existing legislation.

That is not to say that provinces only take strong environmental initiatives when prodded by the federal government—far from it. However, experience shows that federal leadership in setting baseline environmental standards, especially where provinces/states are allowed to improve on those standards, generally leads to higher environmental protection levels.

There is no evidence that federal-provincial overlap in environmental regulation is a significant problem. To the contrary, there is ample evidence that national environmental standards, combined with the option of tougher provincial standards, result in stronger overall environmental protection levels.

A full explanation of why this is so goes beyond the scope of this paper. However, one of the main reasons is that, without national environmental standards, there is a temptation for an individual province to use lower environmental standards as a way to attract, or retain, industry. This phenomenon, known as the "pollution haven" problem, was one of the primary reasons why the 1972 Parliamentary Committee on the Constitution of Canada (the "MacGuigan Committee") called for the federal government to take a leadership role in setting national environmental standards. Similarly, Parliament's Environment Committee, in its 1992 report "The Environment and the Constitution", echoed the need for strong federal leadership in setting national environmental standards.

In sum, the Harmonization Accord is a solution in search of a problem. There is no evidence that federal-provincial overlap in environmental regulation is a significant problem. To the contrary, there is ample evidence that national environmental standards, combined with the option of tougher provincial standards, result in stronger overall environmental protection levels. Simply put, there is no basis for the claim that the Harmonization Accord will enhance environmental protection in Canada. In fact, by weakening the federal government's environmental role, it is likely to have the opposite effect.

Stewart Elgie is a part-time professor at Osgoode Hall Law School, and is the managing lawyer of the Sierra Legal Defence Fund (a public interest environmental law organization).

THE BENEFITS OF HARMONIZING OUR ENVIRONMENTAL REGULATORY SYSTEM

BY MICHAEL CLOGHESY

Unfortunately, the *Constitution Act* of 1867 does not make any reference to the environment when it deals with the distribution of legislative powers between federal and provincial governments. Thus, both levels of government have the ability of intervening in any and all areas relating to environment regardless of whether there is overlap and duplication. In fact, a recent Supreme Court decision has confirmed this status.

Over the past few years, the Canadian Council of Ministers of the Environment (CCME) has been attempting to streamline the Canadian environmental regulatory system by more clearly articulating the roles and responsibilities of respective governments. The aim is clearly to develop a more efficient and effective regulatory regime in Canada by eliminating unnecessary duplication and areas of inconsistency.

The current system penalizes the private sector by imposing various unnecessary costs, such as:

* Information costs, arising from the need to discover the regulations, procedures and authorities for approvals.
* Uncertainty costs, arising from not knowing if or when approval will be granted or under what conditions.
* Compliance costs, arising from the need to comply with more than one set of regulations or standards required by more than one agency or jurisdiction.
* Delay costs, arising from the increased time required from application to approval due to multiple assessment or compliance procedures.
* Double jeopardy costs, arising from regulation in one jurisdiction prohibiting actions required in another jurisdiction.

A particularly blatant example of overlap occurs in the area of environmental assessment where both the federal and provincial governments have legislation and regulation that apply to many, if not most, of Canada's major industrial projects.

A particularly blatant example of overlap occurs in the area of environmental assessment where both the federal and provincial governments have legislation and regulation that apply to many, if not most, of Canada's major industrial projects. The uncertainty and high costs related to these processes continues to discourage investment in Canada's natural resources sector, where the inconsistent application of environmental assessments has become an obstacle to competitiveness for the forestry, mining, and oil and gas industries. Governments and society in general can also benefit from a streamlined environmental regulatory system as they will be in a position to utilize their scarce resources in a more effective and efficient manner.

In order to address this issue and as a means of formalizing their intent to work in partnership to achieve the highest level of environmental quality for all Canadians, CCME member governments have developed the " Canada-Wide Accord on Environmental Harmonization", which is intended to be signed at an upcoming meeting of Ministers of the Environment. The objectives of harmonization which are stated in the Accord are to

* enhance environmental protection
* promote sustainable development, and
* achieve greater effectiveness, efficiency, accountability, predictability and clarity of environmental management.

Also clearly stated in the Accord is the following : "Nothing in the Accord alters the legislative or other authority of the governments or the rights of any of them with respect to the exercise of their legislative or other authorities under the Constitution of Canada".

In addition, the Accord mentions that it will be consensus-based and driven by the commitment to achieve the highest level of environmental quality. Furthermore, the agreement will not prevent a government from introducing more stringent environmental measures to reflect specific circumstances.

To implement the commitment set out in this Accord, the governments will enter into multilateral sub-agreements on various aspects, including Inspections, Standards, Environmental Assessment, Monitoring, and Enforcement. These sub-agreements will delineate specific roles and responsibilities to provide a one-window approach to the implementation of environmental measures. Roles and responsibilities will be undertaken by the level of government best situated to effectively discharge them. In assessing which level of government is best situated to assume responsibility, consideration will be given to applicable criteria such as:

* scientific and technical expertise
* equipment and infrastructure to support obligation
* physical proximity
* efficiency and effectiveness
* human and financial resources to deliver obligations
* scale, scape and nature of environmental issue
* ability to address client or local needs
* inter-provincial/inter-territorial/international considerations.

Clearly, not all provinces are in a position to assume additional responsibilities in this area nor are all of them interested in so doing. Priority setting and budgetary constraints will play a leading role in determining whether a government decides to seek responsibility in one or several areas of environmental management as defined by the various sub-agreements.

When a government has accepted obligations and is discharging a role, the other order of government will not act in that role for the period of time determined by the relevant implementation agreement. In the event a government is unable to fulfill its obligations under a sub-agreement, the concerned governments shall develop an alternative plan to ensure that there are no gaps created within the environmental management regime.

To ensure that objectives of this Accord are being met, Ministers, through the CCME, will review progress, address issues, and administer the requirements of the various sub-agreements on a regular basis. To ensure transparency, progress reports will be shared between and among governments and will be made available to the public.

[T]he citizens of Canada have clearly stated in recent polls that they do not want any decrease in environmental quality. In fact, they want to see the quality of the environment improved but in a way that will not affect their jobs or the economy.

Regardless of the various measures included in the Accord and its sub-agreements to ensure an effective, efficient means in attaining the highest level of environmental quality within the context of sustainable development, there remains considerable opposition to the concept of a harmonization agreement on the part of environmental groups. The main concern relates to the possible devolution of federal powers to the provinces. There is much scepticism about the ability of the provinces to assume responsibility for environmental matters. In addition, there is concern that this Accord might lead environmental quality being set to the lowest common denominator.

With respect to the first point regarding the federal government giving up some of its power, there has been no indication to this effect. Quite to the contrary, in fact, the federal government, buoyed by the recent Supreme Court decision in its favour, intends to extend its reach into additional areas currently covered by provincial juridiction. This trend is evident in the proposed new draft legislation on environmental protection.

With respect to provincial governments not assuming their responsibilities, the Accord and its sub-agreements deal specifically with this instance and mechanisms will be put in place to regularly review progress and deal with problems.

Finally, it is difficult to understand the concern the environmental groups have with respect to a lowering of environmental quality as a consequence of harmonization. First and foremost, the citizens of Canada have clearly stated in recent polls that they do not want any decrease in environmental quality. In fact, they want to see the quality of the environment improved but in a way that will not affect their jobs or the economy. Politicians would be foolish to misread this message delivered by the population in general. The Accord clearly states that its objective is to enhance environmental protection; thus, it would be difficult to imagine the contrary.

In conclusion, the Harmonization Accord should be viewed in a positive and constructive sense, where various levels of government are working together to develop a better system to manage the environment. The Accord will provide Canada with an opportunity of meeting its key objectives of seeking a better environment and stimulating the economy by providing investors with a streamlined environmental regulatory regime, which will reduce costs, delays and, most importantly, uncertainty.

Michael Cloghesy is President, Centre patronal de l'environnement du Québec (CPEQ).

THE CANADA-WIDE ACCORD: A THREAT TO NATIONAL STANDARDS

BY KATHRYN HARRISON

In November of 1996, the federal, provincial, and territorial governments unanimously agreed in principle to a Canada-Wide Accord on Environmental Harmonization. Indications are that this Accord and the first three sub-agreements (concerning standard setting, compliance monitoring, and environmental assessment) will be signed at the next meeting of the Canadian Council of Ministers of the Environment this January.

The Canada-Wide Accord warrants scrutiny both for its implications for environmental protection in Canada and the precedents it could set for other policy fields. The environmental Accord is one of few concrete products of recent efforts to "renew the federation". Indeed, the degree of intergovernmental harmony achieved is quite remarkable in what only a few years ago was a hotly contested area of jurisdiction. However, intergovernmental harmony has come at a high price. It is worth noting at the outset that we have seen much of this before. In the mid-1970s, the federal government signed bilateral harmonization agreements with seven provinces (all but Quebec, Newfoundland, and British Columbia). Not coincidentally, the first generation of Accords emerged under circumstances very similar to those of today, with environment departments facing the challenge of implementing new legislation in the face of waning public attention to the environment, threats to national unity, and declining budgets. The federal government then (as now) had few incentives to challenge provincial resource jurisdiction in the name of the environment, and provincial governments were happy to resume the lead.

Th[e] disappointing experience with the first generation of Accords is troubling as we embark on a second-generation Accord, which renews efforts to rationalize federal and provincial roles.

Like the new Canada-Wide Accord, the bilateral Accords of the mid-1970s sought to clarify federal and provincial roles in order to reduce over-

continued on page 14

THE CANADA-WIDE ACCORD: A THREAT TO NATIONAL STANDARDS *from page 13*

lap and duplication. The solution was the so-called "single window" approach. The federal government would take the lead role in setting national standards in consultation with the provinces. The provinces in turn would adhere to national standards in issuing permits for individual sources, and enforce both their own and federal government's standards. In deference to this provincial role, the federal government agreed to leave enforcement to the provinces unless they failed to uphold national standards.

[F]ewer national standards are likely to emerge, and those that do may be weaker by virtue of the fact that every province will have a veto, including those seeking lax standards to protect vulnerable industries.

Unfortunately, neither the federal nor provincial governments lived up to their end of that bargain. The federal government issued few national standards. The signatory provinces did not consistently incorporate national standards in their permits, nor did they effectively enforce their own provincial standards. And despite widespread non-compliance with national standards, the federal government only rarely intervened.

This disappointing experience with the first generation of Accords is troubling as we embark on a second-generation Accord, which renews efforts to rationalize federal and provincial roles. Although it is encouraging that the new Accord and Sub-agreements pay greater attention to accountability than did the original Accords, if anything, the Canada-Wide Accord makes it more difficult for the federal government to step in if a province fails to fulfill its obligations, or for a province to do so in the event of federal government failure. The responsibility for developing an alternative action plan is assigned collectively to the "concerned governments", rather than to the one other government with constitutional jurisdiction. Even more troubling are the ways in which the new Accord goes beyond the first-generation Accords. The original Accords provided that the federal government was to be primarily responsible for developing national standards. Under the new Accord, Canada-wide standards are to be developed by consensus among federal, provincial, and territorial governments. As a result, fewer national standards are likely to emerge, and those that do may be weaker by virtue of the fact that every province will have a veto, including those seeking lax standards to protect vulnerable industries.

Although the Accord leaves open the possibility that the division of federal and provincial responsibilities could vary from issue to issue and province to province, both the Standards and Inspection Sub-agreements clearly indicate that it will normally be the responsibility of the provinces to implement Canada-Wide standards. In practice, adherence to agreed upon standards will depend on the good will of each province. This approach failed last time, as the provinces' good intentions apparently evaporated with their environment budgets and public attention. Having assumed that the provinces would take the lead, the federal government simply did not have the resources to take over the job itself.

A final concern is that the Standards Sub-agreement guarantees to each jurisdiction complete flexibility to adopt whatever approach it prefers to achieve an agreed upon environmental-quality goal. Thus a factory in one province may face an enforceable regulation, while an identical facility in another may face only an unenforceable guideline. In fact, it is by no means clear that the discharge limits contained in those regulations and guidelines would be the same. The primary focus of the Standards Sub-agreement is on developing uniform standards for ambient environmental quality, rather than uniform discharge or product standards. This distinction is not merely semantic. Consistent environmental quality standards will inevitably lead to inconsistent industrial discharge standards, given different environmental conditions in different provinces. The Accord's primary emphasis on environmental quality standards represents a troubling departure from federal and provincial governments' historical emphasis on the need to harmonize industrial discharge standards to prevent a "race to the bottom".

The Accord's primary emphasis on environmental quality standards represents a troubling departure from federal and provincial governments' historical emphasis on the need to harmonize industrial discharge standards to prevent a "race to the bottom".

The Canada-Wide Accord thus presents a risk not only to national standards, but to environmental protection generally. The provinces' track record in adhering to agreed upon national standards is not encouraging. And their task will be that much more challenging in the absence of consistent discharge standards or a commitment to enforceable regulations.

At first blush, the Canada-Wide Accord seems a promising example of what federal and provincial governments can accomplish short of constitutional amendment. Intergovernmental harmony has replaced the ugly spectacle of federal-provincial conflicts over the environment of the late 1980s and early 1990s. However, this renewed harmony may exact a high price in terms of environmental protection. Intergovernmental agreement should not be the end, at least not the only end, in itself.

Kathryn Harrison is Chair of Environmental Studies and Associate Professor in the Department of Political Science at the University of British Columbia.

ENVIRONMENTAL HARMONIZATION: A GUIDE TO THE FUTURE OF CANADIAN FEDERALISM?

BY PATRICK FAFARD

The "harmonization" of federal and provincial roles with respect to the environment has been a priority for Environment Ministers for the last several years. However, to date little progress has been achieved.[1] Nonetheless, recent efforts to "harmonize" environmental policy are about much more than environmental protection. The environmental policy harmonization exercise may hold clues to the future management of the federation. In effect, the efforts to harmonize federal and provincial roles with respect to the environment are indicative of the possibilities and the dangers associated with efforts to redesign the system of Canadian intergovernmental relations.

The operating procedures of the LRC are notable because they reflect recent trends in intergovernmental negotiations in Canada in which the emphasis is on transparency, public participation and, unfortunately, considerable complexity.

THE POSSIBILITIES

In November 1993, the Canadian Council of Ministers of the Environment (CCME) agreed to make harmonization a top priority. They directed their officials to work on a new "Environmental Management Framework for Canada". Both the drafting process and the agreement itself are suggestive of some of the ways in which we might redesign the system of Canadian intergovernmental relations.

With respect to process, following the instructions from Ministers, a discussion paper was released setting out a series of general principles to guide harmonization. An elaborate committee of federal and provincial officials was then established. The Lead Representatives Committee (LRC) was instrumental in developing what was to become the Environmental Management Framework Agreement (EMFA) and the eleven schedules that accompanied the Agreement. The operating procedures of the LRC are notable because they reflect recent trends in intergovernmental negotiations in Canada in which the emphasis is on transparency, public participation and, unfortunately, considerable complexity. For example:

* The LRC brought together all provinces, including Quebec, and had an independent chairperson, an official from the Government of Alberta.
* The LRC created an elaborate structure to assist it in developing an agreement. The LRC met monthly in different parts of the country. As many as 125 officials were members of 14 sub-committees that developed different aspects of the main text and the schedules.
* Early on, a National Advisory Group (NAG) was established made up of 16 people from environmental non-governmental organizations (ENGOS), business, industry, municipalities, and universities. The NAG provided advice and feedback to the LRC with respect to public consultation and the substance of the draft agreements.

It is striking that in this Agreement the federal government was willing to distinguish between that which is "federal" and that which is "national". In a very explicit fashion, Ottawa recognized that the policies and programs that it enacted, while applicable across the country, were not synonymous with national policies, the latter being the responsibility of both orders of government acting in concert.

*The work of the LRC was supplemented by public consultations. Individual members of the LRC and other officials met with stakeholders on a regular basis. Several public workshops were held to solicit input from stakeholders and interested parties. In addition, the CCME Secretariat made extensive use of the Internet to disseminate draft copies of the EMFA and to invite comments from stakeholders and the general public.

In other words, by the usual standards of intergovernmental negotiating, the development of the EMFA was a remarkably open and consultative process. However, as will be described below, the process used to negotiate the Agreement, and the decision-making processes proposed by it, are still subject to criticism on democratic grounds.

While the negotiating process leading to the EMFA was important, the substance of the EMFA is also significant for those who are interested in reforming Canadian intergovernmental relations. Although much of the Agreement is concerned with defining the interests and responsibilities of the federal and provincial governments, the EMFA does set out a process to develop "national" policies. Very strict distinctions are made among federal, provincial, and "national" responsibilities. The latter term is explicitly defined to mean that the common interest is shared by federal, provincial, and territorial governments or that, even if one order of government had the lead role, shared decision making is required or desired by that order of government (Article 1.1). It is striking that in this Agreement the federal government was willing to distinguish between that which is "federal" and that which is "national". In a very explicit fashion, Ottawa recognized that the policies and programs that it enacted, while applicable across the country, were not synony-

continued on page 16

A GUIDE TO THE FUTURE OF CANADIAN FEDERALISM? *from page 15*

mous with national policies, the latter being the responsibility of both orders of government acting in concert. Moreover, in being party to the EMFA, the federal government would have acknowledged that for truly national policies to be initiated, some form of shared decision making would be required. Unfortunately, the concept of "national" policies as defined in the EMFA was not carried over into the Canada-Wide Accord that is currently before the Ministers.

THE DANGERS

The EMFA, had it been signed, would have broken new ground in the conduct of intergovernmental relations in Canada. Nevertheless, the Agreement as drafted by officials had a number of weaknesses. These may have contributed to the rejection of the Agreement by Ministers of the Environment. Moreover, some of the weaknesses apply equally to the current Canada-Wide Accord on Environmental Harmonization. In other words, the pattern of recent environmental negotiations suggests certain dangers that are inherent in almost any process of intergovernmental decision-making.

First, the EMFA was largely silent on the decision rule that was to be used in the development of national policies. The EMFA would have created a series of committees responsible for policy development, coordination, and implementation. However, nowhere was there an explicit statement of a decision rule. In the absence of such a rule, it is almost certain that unanimity would have been the norm. This would have given Ottawa and each of the provinces a veto over the development and implementation of national policies. The net result would have likely been a very slow decision-making process.

The increased use of intergovernmental agreements represents a challenge to democratic accountability. Intergovernmental policymaking, because it is one or more steps removed from the "regular" political process within a single jurisdiction, is less open, less transparent, and inherently less democratic. In other words, intergovernmental policymaking exacerbates the democratic deficit of contemporary governance.

Second, the EMFA and the current Canada-Wide Accord would allow for the establishment of national policies jointly decided by the two orders of government. Although this is arguably a useful innovation in the conduct of intergovernmental relations, for some critics of the EMFA this reference to national policies represents a *de facto* constitutional amendment. Critics have argued that, by creating national decision-making processes, the EMFA would have created a new level of government, one that would be illegitimate, unaccountable and unworkable.[2]

Third, the original EMFA and now the proposed Canada-Wide Accord, add to the democratic deficits of Canadian governments. The increased use of intergovernmental agreements represents a challenge to democratic accountability. Intergovernmental policymaking, because it is one or more steps removed from the "regular" political process within a single jurisdiction, is less open, less transparent, and inherently less democratic. In other words, intergovernmental policymaking exacerbates the democratic deficit of contemporary governance.[3]

Reform of the federation is currently a priority for both Ottawa and the provinces. Recent efforts to harmonize federal and provincial roles with respect to the environment demonstrate both the possibilities and the dangers associated with efforts to redesign the system of Canadian intergovernmental relations. For example, while Environment Ministers and their officials have broken new ground in distinguishing between that which is "federal" and that which is "national", both the negotiations leading to agreements and the agreements themselves are subject to criticism on democratic grounds. However, no one ever said that redesigning the federation would be easy. Perhaps all we can do is try and learn from what has been done in environmental policy and see how it might be applied in other areas.

Patrick Fafard is Assistant Professor in the School of Policy Studies and Research Fellow in the Institute of Intergovernmental Relations, Queen's University.

NOTES

1. For a summary of recent events and an analysis of the successes and failures of the harmonization exercise, see P.C. Fafard, "Green Harmonization: The Success and Failure of Recent Environmental Intergovernmental Relations" in H. Lazar, ed., *Canada: The State of the Federation, 1997* (Kingston: Institute of Intergovernmental Relations, Queen's University, forthcoming).
2. See Canadian Institute for Environmental Law and Policy, "The Environmental Management Framework Agreement—A Model for Dysfunctional Federalism? An Analysis and Commentary", CIELAP Brief Number 96/1, February 1996, p. vii. This document can be found at the CIELAP Web site: www.web.apc.org/cielap.
3. The term democratic deficit or democracy deficit is usually applied to decision making in the European Union (EU). For an introduction to the issues in an EU context, see M. Newman, "Democracy and the European Union" in V. Symes *et al.* , eds., *The Future of Europe* (London: Macmillan, 1997), at 15-42. For a discussion of the inherent democratic deficit of Canadian intergovernmental relations, see R. Gibbins with the assistance of K. Harmsworth, *Time Out: Assessing Incremental Strategies for Enhancing the Canadian Political Union*, C.D. Howe Institute, Commentary 88 (February 1997).

ENVIRONMENTAL HARMONIZATION IN CANADA DOES MORE THAN WHAT IT WAS MEANT TO DO

BY GARY GALLON

Environmental regulations and policies vary from province to province, making it confusing and more costly for companies to provide goods and services across Canada. For example, soft drink recycling and recovery legislation differ. One province requires cans to be made of 100 per cent aluminum. Others require a steel top on the cans. One province mandates 30 per cent refillable soft drink containers; others do not.

The lack of harmonization of environmental laws drives up the cost of doing business and, ironically, impedes environmental cleanup. Harmonizing this kind of patchwork of environmental regulation has been long overdue.

The same confusion applies to the approval of new environmental technologies. Verification and approval in one province do not apply in another. Thus the technology has to be tested and verified for each province—at great loss in cost and time to the companies. The lack of harmonization of environmental laws drives up the cost of doing business and, ironically, impedes environmental cleanup. Harmonizing this kind of patchwork of environmental regulation has been long overdue.

The Canadian Council of the Ministers of the Environment (CCME) began a process to harmonize environmental programs and policies in November 1993. The CCME "directed officials to minimize overlap and duplication between federal and provincial/territorial programs, to clarify what role each order of government should play in protecting the environment, and to bring greater consistency to environmental laws and policies across the country. An underlying tenet was that environmental protection must be maintained or enhanced by the initiative".

In the Fall of 1994, the Environmental Management Framework Agreement (EMFA) was drafted. It consisted of a framework Agreement and 11 schedules. The schedules refer to areas of functional responsibility between the provinces and the federal government, specifically Monitoring; Environmental Assessment; Compliance; International Agreements; Guidelines, Objectives and Standards; Policy and Legislation; Environmental Education/Communication; Environmental Emergency Response; Research and Development; State of the Environment Reporting; and Pollution Prevention.

DISTORTION OF ENVIRONMENTAL HARMONIZATION

The intention of the effort was correct. The need for harmonization was being addressed. However, other forces converged from 1993 onward to distort the effort. The new forces would morph harmonization into what was essentially devolution.

[T]he provinces viewed environmental protection as being an impediment to economic growth. Most have been cutting their environmental regulations, and pressing for soft voluntary measures. Alberta, Quebec, and Ontario have taken direct aim at reducing the role environmental protection will take in their provinces.

What were these forces? First, in 1993 the federal government was going through a major deficit-cutting exercise. The Finance Minister ordered each of the ministries to conduct a "program review". Environment Canada was ordered to cut its operating budget 40 per cent. It could do that without devolving most of its powers (and costs) to the provinces. Environment Canada severely downsized its environmental laboratories, let go of most of its scientists, and privatized a number of its traditional functions. Environment Canada's Deputy Minister, Ian Glen, wrote in a memo to staff during the most recent round of 200 staff cuts, that the "cuts in these areas are consistent with the on-going direction of federal-provincial harmonization."

In spite of their inability to assume the new responsibilities, the provinces encouraged the devolution. . . . They want to reduce, or eliminate, federal environmental responsibilities within their jurisdictions.

However, the provinces were in no position to take the added responsibilities. They, too, were busy slashing their environment budgets. Ontario Environment Ministry's operating budget has been cut 43 per cent since 1995, from $290 million to $165 million. Staff levels have been reduced 36 per cent, from 2,430 to 1,550. Quebec's environment function was cut 64.9 per cent, from $151 million in 1994-95 to $53 million in 1997-98. Newfoundland Environment Department's budget has been cut 60 per cent since the 1994-95 fiscal year, from $10.6 million to $3.6 million. Alberta's Environment Protection Ministry will cut its environment budget 29.4 per cent, from $405 million to $296 million by the year 2000.

In spite of their inability to assume the new responsibilities, the provinces encouraged the devolution. Quebec

continued on page 18

ENVIRONMENTAL HARMONIZATION IN CANADA DOES MORE . . . *from page 17*

and other provinces, such as Alberta and British Columbia, are clamouring for more independent environmental powers. They want to reduce, or eliminate, federal environmental responsibilities within their jurisdictions.

The Standing Committee found that "the absence of evidence supporting the overlap and duplication rationale for the project led many witnesses to surmise that support for the project must be inspired by other considerations." The Committee recommended that "therefore it seems doubtful to the Committee that the Accord and Sub-agreements will be successful in achieving greater administrative efficiency or cost savings."

Also, the provinces viewed environmental protection as being an impediment to economic growth. Most have been cutting their environmental regulations, and pressing for soft voluntary measures. Alberta, Quebec, and Ontario have taken direct aim at reducing the role environmental protection will take in their provinces. This effort has been coordinated with the resource, energy, and chemical industry sectors, through "The Friday Group", whose representatives have been sitting at the drafting-and-review table of the CCME harmonization process.

One action that made it clear the provinces were not as interested in harmonization as they were in devolution was the fact that they initiated a 50 per cent budget cut to CCME's annual budget of $3 million. Total contributions from the provinces and the federal government were reduced to $1.4 million in 1996-97. This was at a time when CCME was being given the added responsibilities for coordinating the implementation of the harmonization effort. It effectively was stripped of the capacity to carry out the harmonization mandate.

FAULT STUDIES USED TO "PROVE" COSTS OF OVERLAPPING JURISDICTIONS

To prove that overlapping jurisdictions and excessive environmental regulations are a burden, provinces like Alberta and the industry associations funded a number of cost studies to strengthen their arguments at the CCME harmonization negotiations. Alberta, for example, funded two studies by the Macleod Institute for Environmental Analysis in Calgary on additional costs to industry from overlapping federal-provincial environmental regulations. When the first paper, prepared under subcontract to the Macleod Institute by the Canadian Institute for Resources Law (CIRL) found no evidence of excessive costs, Alberta quickly funded a second study by the Macleod Institute. Called "Working Paper #3", it was subcontracted to the Economics Department of the University of Calgary. The department built a hypothetical economic model that postulated potential losses to industry from "unexpected delays" to projects resulting from overlapping environmental assessments imposed by the federal government. The model posited that, in a worst-case scenario, the cost of project delays lasting six months to 1.5 years can range from $38 million to $110 million for a $240 million project in Alberta.

Alberta Environment Minister, Ty Lund, relied on this report and the "Lean Green" Conference Board of Canada study to opine that "uncertainty and delays in obtaining project approvals due to the different provincial federal environmental regulations is costing industry millions of dollars", and told senior industry and government officials from across Canada that the federal and provincial governments must work harder to harmonize Canada's environmental regulatory framework.

At the same time, the Vice President of the Conference Board of Canada, who circulated the "Lean Green" cost study to senior government officials, wrote that "unharmonized requirements of government agencies impose documented costs on the Canadian economy. A more efficient federal-provincial regulatory system that maintains environmental quality could save Canadian firms in the manufacturing, mining, and utility sectors $500-600 million per year. And a more efficient and effective regulatory system would enhance the climate for investment in Canada." The dollar figures ($550-600 million) he used were based on another inadequate economic model that used poor assumptions.

The moment for the CCME harmonization accord has been substantially reduced. What appeared to be a sure thing in 1997 appears uncertain for 1998, when the ministers will again meet on the subject. In the end, many of the good aspects of the harmonization accord have already been addressed in an ad hoc *fashion by the federal and provincial governments. They have virtually eliminated duplication in the administration of environmental law, or are in the process of doing so.*

HOUSE OF COMMONS HEARINGS ON ENVIRONMENTAL HARMONIZATION

The lobbying effort paid off. At their November 20, 1996 meeting, the Council of Ministers gave approval in principle to the Canada-Wide Accord

on Environmental Harmonization. It contained three subagreements covering environmental assessments, the setting of Canada-wide standards, objectives, and guidelines in areas such as air, water and soil quality, and inspection activities by environment departments.

The ministers of CCME were scheduled to sign the accord in the first week in November 1997. However, concerned about the deal, the House of Commons Standing Committee on Environment and Sustainable Development, chaired by Charles Caccia, decided to hold a lightning set of hearings on "Harmonization Initiative of the Canadian Council of Ministers of the Environment" between October 20-29, 1997 in Ottawa. It recommended against signing the accord. The evidence at the Committee was overwhelming in favour of taking a cautious approach. The concerns were conveyed to the federal Environment Minister Christine Stewart and to other Cabinet members. Judiciously, Stewart asked for the signing session of CCME to be postponed into the new year—due to preparations for the Kyoto global warming talks.

The Standing Committee found that "the absence of evidence supporting the overlap and duplication rationale for the project led many witnesses to surmise that support for the project must be inspired by other considerations." The Committee recommended that "therefore it seems doubtful to the Committee that the Accord and Subagreements will be successful in achieving greater administrative efficiency or cost savings."

The moment for the CCME harmonization accord has been substantially reduced. What appeared to be a sure thing in 1997 appears uncertain for 1998, when the ministers will again meet on the subject. In the end, many of the good aspects of the harmonization accord have already been addressed in an *ad hoc* fashion by the federal and provincial governments. They have virtually eliminated duplication in the administration of environmental law, or are in the process of doing so. They have worked out processes for streamlining their dual roles in environmental assessment (except in extreme cases of disagreement). The first item of business when the ministers meet will be to address the question of what are the beneficial aspects of the harmonization accord that remain?

Gary Gallon, President of the Canadian Institute for Business and the Environment (CIBE), Montreal, worked as Senior Policy Advisor to the Ontario Minister of the Environment (1985-90), and was President of the Canadian Environment Industry Association, Ontario (1993-96).

NOTES

1. Canadian Council of Ministers of the Environment (CCME) Website, www.ccme.ca/ccme, Winnipeg, December 1997.
2. Tom Spears, *The Citizen*, Ottawa, July 28, 1997 .
3. See the analysis of these studies in G. Gallon, *Analysis of Five Canadian Environmental Cost Studies* (Montreal: Canadian Institute for Business and the Environment, March 1997).
4. Working Paper #2, *Overlapping Environmental Jurisdiction: A Selective Survey of Industry Perceptions and Costs in Alberta*, by S.A. Kennett, Canadian Institute for Resources Law (CIRL), E.J. McCoy, Q.C., and Dr. G.A. Yarranton, The Macleod Institute for Environmental Analysis at the University of Calgary, (Calgary, January 1996).
5. Working Paper #3, *Overlapping Environmental Jurisdictions: Estimation of Economic Costs Associated with Regulatory Delay*, by J. Jorgensen, Chair, Insurance and Risk Management and Professor, Faculty of Management, University of Calgary; P. Mokkelbost, Professor, Faculty of Management, University of Calgary; and their students, A. Smith, C. Butler Wutzke (Calgary: Macleod Institute for Environmental Analysis, May 1996).
6. *Lean Green: Benefits From a Streamlined Canadian Environmental Regulatory System*, by A. Howatson, Senior Researcher, Business and Environment Research Program, The Conference Board of Canada (Ottawa, April 1996).
7. "Lund Stresses Need for Harmonization at National Energy Forum", Press Release No. 96-069, Alberta Environmental Protection Ministry, Edmonton, May 28, 1996.
8. Letter to Mel Cappe, Deputy Minister, Environment Canada, from Gilles Rheaume, Vice-President, Policy, Business and Society, The Conference Board of Canada, Ottawa, May 13, 1996.
9. *Draft Report on the Harmonization Initiative of the Canadian Council of Ministers of the Environment*, the Standing Committee on Environment and Sustainable Development, Hon. Charles Caccia, Chair, House of Commons, Ottawa, December 1997.

THE KYOTO PROTOCOL WILL COST ALL CANADIANS BUT MAY NOT ACHIEVE MUCH

from page 7

served to significantly reduce the risk of global warming, or that the objectives will be achieved at the lowest cost possible.

Needless to say, future governments will have to face most of the costs of these commitments. In my view, they are unlikely to feel bound by them without the explicit backing and approval of Canadians on the measures required to implement the Protocol. Consequently, I reiterate my earlier position that ratification of this Protocol should be preceded by extensive public consultations, a Parliamentary debate, and a free vote held in the House of Commons.

Daniel Schwanen is a Senior Policy Analyst with the C.D. Howe Institute.

SPECIAL ISSUE: SUPREME COURT OF CANADA IN 1997

WATCH FOR THE SECOND ANNUAL *CANADA WATCH* SURVEY OF THE SUPREME COURT OF CANADA'S CONSTITUTIONAL CASES, COMING IN APRIL 1998. THIS ISSUE WILL FEATURE COMPREHENSIVE ANALYSIS OF ALL THE SUPREME COURT'S CONSTITUTIONAL DECISIONS OF 1997. THERE WILL ALSO BE COMMENTARY FROM THE COUNTRY'S LEADING CONSTITUTIONAL EXPERTS SUCH AS

PETER HOGG,
PETER RUSSELL,
BRIAN SLATTERY,
JAMIE CAMERON, AND
BRUCE RYDER,

AS WELL AS ANALYSIS FROM SOME OF THE LEADING CONSTITUTIONAL LITIGATORS, INCLUDING

BOB CHARNEY,
MARY CORNISH, AND
RAJ ANAND.

YOU SHOULD ALSO PLAN TO ATTEND THE *CANADA WATCH* SUPREME COURT CONFERENCE, ON APRIL 17 IN TORONTO, WHERE ALL THE PAPERS WILL BE PRESENTED AND DISCUSSED.

PLEASE CALL OSGOODE HALL LAW SCHOOL AT **736-5030** FOR FURTHER INFORMATION.